

245479

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

Rebecca Gentry Sullivan,

Plaintiff,

v.

George P. Maxwell, M.D.; and, Maxwell
Aesthetics PLLC f/k/a Nashville Plastic
Surgery, PLLC,

Defendants.

Case No. 19061

JURY DEMAND

FILED
2019 JAN -8 PM 4:18
RICHARD P. ROOKER, CLERK

COMPLAINT

Comes now the Plaintiff, through counsel, and for complaint in this cause would show as follows.

PARTIES

1. Plaintiff Rebecca Gentry Sullivan (hereinafter "Plaintiff" or "Ms. Sullivan") is a citizen and resident of Franklin, Williamson County, Tennessee.

2. Defendant George P. Maxwell, M.D., (hereinafter "Defendant Maxwell" or "Dr. Maxwell") is a physician licensed to practice medicine in the State of Tennessee. At the time of the matters complained of herein, Dr. Maxwell provided medical care, services and/or treatment to and/or on behalf of Ms. Sullivan, in Nashville, Davidson County, Tennessee.

3. Upon information and belief, Dr. Maxwell may be served with process:

a. at the practice address listed through the Tennessee Department of Health of "2020 21ST AVE SOUTH, NASHVILLE, TN 37212"; or, in the alternative,

b. through the registered agent of Defendant Maxwell Aesthetics f/k/a Nashville Plastic Surgery, PLLC, listed with the Tennessee Secretary of State as "G Patrick Maxwell, at 2020 21ST AVE S NASHVILLE, TN 37212-4354."

4. Defendant Maxwell Aesthetics PLLC f/k/a Nashville Plastic Surgery, PLLC (hereinafter "Maxwell Aesthetics"), is a professional corporation organized under the laws of the State of Tennessee with its principal place of business in Nashville, Davidson County, Tennessee.

5. Defendant Maxwell Aesthetics may be served with process upon its registered agent, G Patrick Maxwell, at 2020 21ST AVE S NASHVILLE, TN 37212-4354.

6. At the time of the matters complained of herein, Dr. Maxwell was an employee, agent, partner, and/or member of Defendant Maxwell Aesthetics.

7. Whenever Dr. Maxwell provided any medical care or services whatsoever to or on behalf of Ms. Sullivan, it was done within the course and scope of his employment and/or agency for and on behalf of Defendant Maxwell Aesthetics.

VENUE

8. Venue is proper under both Tenn. Code Ann. §§ 20-4-104(1)(2) and 20-4-101(a) in Davidson County, Tennessee, as the cause of action stems from injuries in connection with medical care rendered by Defendants (or through their employees or agents) in Davidson County, Tennessee, and where Defendant Maxwell Aesthetics maintains its principal office.

T.C.A. § 29-26-121 COMPLIANCE

9. Pursuant to T.C.A. § 29-26-121 (a), which requires that any person asserting a potential claim for a Healthcare Liability action shall give written notice of such potential claim to each health care provider against whom such potential claim is being made at least sixty (60) days before the filing of a Complaint. Notice letters dated September 10, 2018, were sent by certified mail to Defendants.

10. Compliance with the provisions of T.C.A. § 29-26-121(a)(3)(B) is demonstrated herein by filing a certificate of mailing from the U.S. postal service stamped with the date of mailing, and an affidavit of the party mailing notice, establishing that the specified notice was timely mailed by certified mail, return receipt requested. **Exhibit A.**

11. The notice described above was provided within the statute of limitations as provided by T.C.A. § 29-26-116 and T.C.A. § 28-3-104. Specifically, the notice described above was provided within one year from the date the cause of action accrued as provided in T.C.A. § 29-26-116(a)(4), that is, within one year from the date Plaintiff discovered, or reasonably should have discovered, that a foreign object had been negligently left in her body. The sixty (60) day waiting period has now passed and pursuant to T.C.A. § 29-26-121 (C), this action is timely filed.

12. In accordance with T.C.A. § 29-26-122, attached as **Exhibit B** is the Certificate of Good Faith asserting that Plaintiff's counsel has consulted with one (1) or more experts who have provided a signed written statement confirming that upon information and belief they (a) are competent under T.C.A. § 29-26-115 to express opinion(s) in the case; and (b) believe, based on the available medical records concerning the care and treatment of Ms. Sullivan, for the incident(s) at issue, that there is a good faith basis to maintain the action consistent with the requirements of T.C.A. § 29-26-115.

FACTUAL BACKGROUND

13. On October 21, 1999 Ms. Sullivan was admitted to Baptist Hospital (now Saint Thomas Midtown Hospital (STMH) in Nashville, Tennessee) to undergo scheduled treatment by employees and/or agents of Maxwell Aesthetics including, specifically, Dr. Maxwell.

14. The treatment was expected to be outpatient with Ms. Sullivan to be discharged home that same day.

15. The medical records from Plaintiff's October 21, 1999 admission reflect Dr. Maxwell's principal admitting diagnosis for Plaintiff as "deviated nasal septum," to further include "deviated nasal septum," "hypertrophy of nasal turbinates," "other diseases of nasal cavity and sinuses," and, "late effect of fracture of skull and face bones."

16. The medical records also provide that the principal procedure(s) performed by Dr. Maxwell during the October 21, 1999 admission were a septoplasty and turbinectomy.

17. During the septoplasty/turbinectomy, Dr. Maxwell utilized a Kirschner wire (a K-wire).
18. Dr. Maxwell did not intend to place any portion of the K-wire in Ms. Sullivan's brain.
19. Dr. Maxwell did not document the length of the K-wire implanted during the operation.
20. At no point before or after the operation did Defendants advise Ms. Sullivan that a K-wire would be or had been placed during the operation.
21. At no point before or after the operation did Defendants advise Ms. Sullivan of the risks associated with placement or retention of a K-wire.
22. At no point did Defendants obtain Ms. Sullivan's consent to place a K-wire during the operation.
23. Ms. Sullivan experienced post-operative complications and Dr. Maxwell did not discharge her to home as expected on October 21.
24. Ms. Sullivan was subsequently discharged on October 22, 1999.
25. At no point after the surgery did Dr. Maxwell undertake any diagnostic testing to verify the placement of the K-wire or determine the cause of Ms. Sullivan's post-operative complications.
26. In the 17+ years since the operation performed by Dr. Maxwell, Ms. Sullivan suffered intermittently from migraines.
27. In 2016, Ms. Sullivan was diagnosed with breast cancer.
28. She responded well to her cancer treatment, which included a double mastectomy and chemotherapy; however, she voiced concerns to her oncologist about her ability to endure the post-chemotherapy treatment as she believed it was increasing the severity of her migraines.
29. Her oncologist advised that it was unlikely that the post-chemo treatment would have any effect on the severity or frequency of migraines and diagnostic testing (an MRI of her head) was ordered to determine the cause of her headaches.
30. Ms. Sullivan exercised reasonable diligence in contacting her physicians to get the results but the results were not immediately available to her.

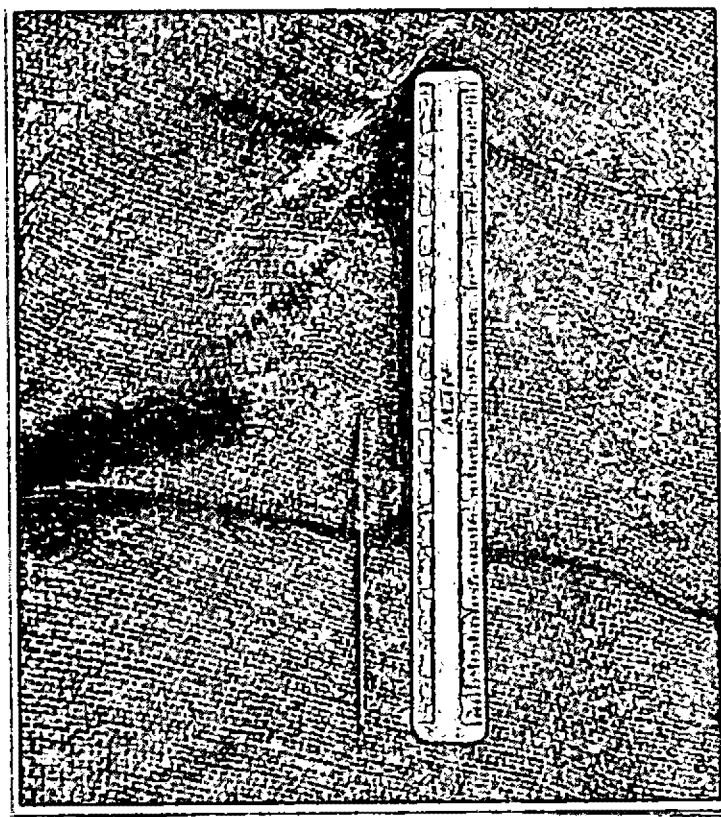
31. Based on the results of the MRI, additional imaging and referrals to specialists at the Howell Allen and Nashville ENT were ordered.

32. Ms. Sullivan ultimately underwent a complicated operation (septoplasty and transnasal removal of foreign body, nose and intracranial, w/ Brain Lab navigation) for removal of the foreign body by a combination of surgical specialists.



Photograph of Ms. Sullivan following the removal procedure performed on June 12, 2018.

33. During the procedure, a 7.5 cm K-wire was successfully removed.



Post-operative photograph of the foreign object removed on June 12, 2018.

34. Despite best medical efforts, Ms. Sullivan experienced complications in the post-operative setting.

35. These complications included a left frontal intraparenchymal hemorrhage with midline shift, resulting in significant neurological changes.

36. The post-operative complications extended her hospital admission for the removal procedure and even after she was discharged, the severe cognitive symptoms resulted in additional hospitalization(s), during which time she was unable to care for herself or her three minor children.

**WRONGS COMPLAINED OF THE DEFENDANT
GEORGE P. MAXWELL, MD**

37. Plaintiff incorporates each of the above paragraphs as if fully set forth herein.

38. The Defendant Dr. Maxwell was negligent in general in not providing reasonable medical care to Ms. Sullivan. Without limiting this general allegation of negligence, Dr. Maxwell was negligent further and at fault in that he:

- a. Negligently failed to provide appropriate and reasonable medical care to Ms. Sullivan;
- b. Negligently placed the K-wire in an unintended location;
- c. Negligently failed to recognize and appreciate the seriousness of the signs and symptoms exhibited by Ms. Sullivan post-operatively during the October 21, 1999 hospital admission;
- d. Negligently failed to properly assess the true condition of Ms. Sullivan and the risks if untreated;
- e. Negligently failed to advise Ms. Sullivan of the risks associated with the placement and retention of K-wires;
- f. Negligently failed to obtain the informed consent of Ms. Sullivan to place a K-wire prior to the operation;
- g. Negligently failed to inform Ms. Sullivan that a K-wire had been placed during the operation;
- h. Negligently failed to recognize the actual length of the K-wire placed in Ms. Sullivan during the operation;
- i. Negligently failed to insure that the K-wire that was used was the appropriate length for her anatomy;
- j. Negligently failed to verify placement of the K-wire to its intended location; and,
- k. Negligently failed to adhere to the standards of acceptable practice.

WRONGS COMPLAINED OF THE DEFENDANT
MAXWELL AESTHETICS PLLC f/k/a NASHVILLE PLASTIC SURGERY, PLLC

39. Plaintiff incorporates each of the above paragraphs as if fully set forth herein.

40. Maxwell Aesthetics PLLC f/k/a Nashville Plastic Surgery, PLLC (Defendant Maxwell Aesthetics) employed various persons including the Defendant Dr. Maxwell. At the time of the matters complained of herein, whenever these persons, including the Defendant Dr. Maxwell, did anything for and/or on behalf of Ms. Sullivan, including but not limited to providing any medical care care and/or services, Dr. Maxwell and such persons acted within the course and scope of their employment and/or agency for and on behalf of the Defendant Maxwell Aesthetics. Therefore, any negligence of such persons, including Dr. Maxwell, is imputed, by law, to Defendant Maxwell Aesthetics.

41. Defendant Maxwell Aesthetics is vicariously liable under the laws of agency and/or *respondeat superior* for any acts or omissions of its agents (apparent or otherwise), borrowed servants and employees including, but not limited to, the Defendant Dr. Maxwell. Therefore, any negligence of the Defendant Dr. Maxwell is imputed, by law, to Defendant Maxwell Aesthetics under the principles of actual or apparent agency, borrowed servant doctrine and/or *respondeat superior*.

42. Acting through its actual and/or apparent employees and/or agents and/or borrowed servants, Defendant Maxwell Aesthetics was careless and negligent in the care and treatment of Ms. Sullivan. Without limiting this general allegation of negligence, the defendant, through its actual and/or apparent employees and/or agents and/or borrowed servants, was negligent in the following ways:

- a. Negligently failed to provide appropriate and reasonable medical care to Ms. Sullivan;
- b. Negligently placed the K-wire in an unintended location;
- c. Negligently failed to recognize and appreciate the seriousness of the signs and symptoms exhibited by Ms. Sullivan post-operatively during the October 21, 1999 hospital admission;

- d. Negligently failed to properly assess the true condition of Ms. Sullivan and the risks if untreated;
- e. Negligently failed to advise Ms. Sullivan of the risks associated with the placement and retention of K-wires;
- f. Negligently failed to obtain the informed consent of Ms. Sullivan to place a K-wire prior to the operation;
- g. Negligently failed to inform Ms. Sullivan that a K-wire had been placed during the operation;
- h. Negligently failed to recognize the actual length of the K-wire placed in Ms. Sullivan during the operation;
- i. Negligently failed to insure that the K-wire that was used was the appropriate length for her anatomy;
- j. Negligently failed to verify placement of the K-wire to its intended location; and,
- k. Negligently failed to adhere to the standards of acceptable practice.

DAMAGES

43. Plaintiff incorporates the factual allegations set forth above as if fully set forth herein.

44. As a direct and proximate result of the actions of the Defendants, Ms. Sullivan has endured and will continue to endure pain, suffering, mental anguish, loss of enjoyment of life, disfigurement, impairment, loss of earning capacity and loss of consortium of her three minor children during the time period she was unable to care for them.

45. Plaintiff's damages further include, as a direct and proximate result of the negligence of the defendants, medical and hospital bills, and other recoverable losses and expenses.

46. Plaintiff further asserts all available damages under applicable law.

**CHALLENGE TO THE CONSTITUTIONALITY OF
TENN. CODE ANN. §§ 29-39-102 & 29-39-104**

47. Plaintiff incorporates each of the above paragraphs as if fully set forth herein.

48. On October 1, 2011, the Tennessee Civil Justice Act ("Act") went into effect, enacting "caps" in all Tennessee personal injury case for non-economic damages and punitive damages. Tenn. Code Ann. § 29-39-102 and Tenn. Code Ann. § 29-39-104. Under the Act, and in this lawsuit, non-economic damages are purportedly capped at \$750,000, and punitive damages are capped at twice the compensatory damages up to maximum of \$500,000.

49. Tenn. Code. Ann. §§ 29-39-102 and -104 are unconstitutional deprivations of the constitutionally protected right to trial by jury. *See Lindenberg v. Jackson Nat'l Life Ins. Co.*, No. 17-6034/6079, 2018 U.S. App. LEXIS 36097, at *44 (6th Cir. Dec. 21, 2018)(concluding that "the statutory cap on punitive damages set forth in T.C.A. § 29-39-104 violates the Tennessee Constitution"). Those provisions violate Art. I, sec. 6 of the Constitution of the State of Tennessee, which provides that the right of trial by jury shall remain inviolate. In addition, the subject statutory caps violate Art. I, sec. 17 of the Tennessee Constitution which states that all courts shall be open, and every man shall have a remedy for injury done by due course of law and without denial or delay. The subject statutory caps usurp the powers of the Judicial Branch in violation of Art. II, secs. 1 & 2 of the Tennessee Constitution. In addition, the subject statutory caps violate Art. XI, sec. 16 of the Tennessee Constitution, which indicates that the rights of citizens articulated in Tennessee's Bill of Rights "[s]hall never be violated on any pretence whatever.... [A]nd shall forever remain inviolate."

PRAYER FOR RELIEF

50. WHEREFORE, Plaintiff prays for relief as follows:

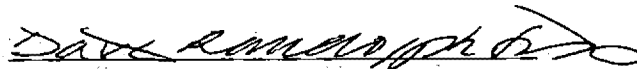
- a. Defendants be served with process and answer herein;
- b. For fair and reasonable compensatory damages;
- c. For the court costs of trying this action;

- d. For a jury to hear this cause of action;
- e. For costs to be taxed to the Defendants;
- f. For such other and further relief as the Court may deem proper; and,
- g. For prejudgment interest.
- h. Plaintiff further demands a declaration that the caps found in Tenn. Code Ann. §§ 29-39-102 and 104 are unconstitutional as described above.

51. WHEREFORE, Plaintiff respectfully reserves the right to amend this Complaint to conform to the evidence.

Respectfully submitted this 8th day of January, 2019.

DAVID RANDOLPH SMITH & ASSOCIATES



David Randolph Smith, TN BPR#011905

Dominick R. Smith, TN BPR # 028783

W. Lyon Chadwick, TN BPR # 029599

Christopher W. Smith, TN BPR # 034450

DAVID RANDOLPH SMITH & ASSOCIATES

1913 21st Avenue South

Nashville, Tennessee 37212

(615) 742-1775 phone

(615) 742-1223 fax

drs@drslawfirm.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that notice of Plaintiff's constitutional challenge is provided by service of a copy of this Complaint via U.S. Mail, postage prepaid, on this the 8th day of January, 2019 to Attorney General and Reporter Herb H. Slattery III, at the Office of Attorney General and Reporter P.O. Box 20207, Nashville, Tennessee 37202-0207.

A handwritten signature in black ink, appearing to read "W. Lyon Chadwick, Jr.", written in a cursive style.

W. Lyon Chadwick, Jr.